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MAILED

JAN 17 2003

Technology Center 2100

Paper No. 14

In re Application of Barrenscheen et al.  
Application No. 09/124,288  
Filed: July 28, 1998  
Attorney Docket No. GR 98 P 2078  
Title: MEMORY DEVICE AND METHOD FOR  
OPERATING THE MEMORY DEVICE

DECISION GRANTING PETITION  
TO WITHDRAW THE HOLDING OF  
ABANDONMENT UNDER  
37 C.F.R. §1.181 (a)

This is a decision on the petition with fee filed September 9, 2002 to revive under 37 C.F.R. § 1.137(B). Based upon a review of the file history, the petition is being treated as a petition to withdraw the holding of abandonment mailed July 8, 2002 (Paper No. 12) under 37 C.F.R. § 1.181(a).

The petition is **GRANTED**.

	<u>Applicable Prosecution History</u>
April 12, 2000	Non-final Office action mailed (Paper No. 6).
Sep 12, 2000	Amendment A filed (Paper No. 7) with two month extension of time.
Jan 25, 2001	Teleconference held (see remarks on page 5 of Paper No. 10). Supplemental Amendment B filed via fax.
Feb 27, 2001	Notice of Non-Responsive Amendment mailed (Paper No. 11).
March 5 or 13, 2001	Telephone interview (no paper no.) wherein the examiner indicates the reason for the non-responsive notice was moot and no further action by applicants was needed.
July 8, 2002	Notice of Abandonment mailed (Paper No. 12) with examiner indicating, "No reply has been received" to the Office letter mailed on 27 February 2001.

Issue

Does the record support petitioners' statement that no Office action was outstanding and therefore the Notice of Abandonment was improper?

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Decision

The practitioner had provided a *responsive* amendment on September 12, 2000. Subsequent to that the examiner apparently attempted to initiate an examiner's amendment to place the case in condition for allowance. Rather than approving that proposed amendment, the applicants elected to file a supplemental response on January 25, 2001 via facsimile. The record suggests a problem occurred with the fax transmission that caused the examiner to indicate the supplemental response of January 25, 2001 was non-responsive and to set a one-month period for reply. Applicants' representative was notified either on March 5 (examiner's interview summary found in the file) or March 13 (see petitioners' statement, page 3), 2001 that the supplemental response was no longer defective. On July 8, 2002, a Notice of Abandonment was mailed with the examiner indicating, "No reply has been received."


A review of the record shows the first amendment filed on September 12, 2000 was responsive under 37 C.F.R. § 1.111. Therefore, even if applicants' filing of January 25, 2001 was held ultimately to be non-responsive, the examiner should have complied with the guidelines set forth in MPEP § 707, Examiner's Letter or Action" and sent out a complete Office action in response to applicants filing of September 12, 2000.

The record supports petitioners' statements that they were notified in March 2001 that the supplemental amendment filed January 25, 2001 was responsive and that no further response was necessary *from applicants*. It should be noted that both amendments filed on September 12, 2000 and January 25, 2001 were formally entered into the application. Therefore, the examiner's indication of the application being abandoned in view of applicants' failure to timely file a proper reply to the Office letter mailed on 27 February 2001 was in error.

Accordingly, the petition is GRANTED. The application was not abandoned in fact. The Office regrets any inconvenience this error may have caused petitioners.

\* As no fee is required for a petition filed under 37 C.F.R. § 1.181, the application file is being forwarded for a refund of the petition fee of \$1280.00 to deposit account no. 12-1099. Thereafter the application will be forwarded to the examiner for consideration of applicants' amendments filed on September 12, 2000 and January 25, 2001. Should the applicants not receive a response from the Office within two months from the mail date of this decision, they are advised to contact the examiner's supervisor, Mr. Ayaz Sheikh at 703-305-9648.

Telephone inquiries on this decision should be directed to the undersigned at 703-308-0269.



Josie A. Ballato  
Special Programs Examiner  
Technology Center 2100  
Computer Architecture, Software, and Information Security

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Page 1 of 25

Date: May 23, 2003

To: Latrice Sims

(703) 308-5077

From: Gilbert Calice

Fax No. (954) 925-1101

E-mail: landrade@patentusa.com

Subject: 2<sup>nd</sup> Request of Outstanding Refunds

OFFICE OF FINANCE  
REFUND BRANCH  
2003 JUL 29 PM 4:17  
US PATENT & TRADEMARK  
OFFICE

Dear Ms. Sims,

Attached is another summary of outstanding refunds due to our account as of May 31, 2003 along with the letters submitted requesting the refund. We did receive a few of the old refunds a few weeks ago and then it stopped. I am faxing the old outstanding refund requests for further review. Thanks so much for your help.

Sincerely,

*Gilbert Calice*

Gilbert Calice

For the Firm

OUTSTANDING CREDITS	\$ AMOUNT	ITEM	SERIAL #	DOCKET#	109 CK.#	DATE CREDIT REQUEST	LAST CORRESPONDENCE
	130.00	DEC	10/047,613	MINIT213	477	MAY 6 2002	mary adel 703-308-2028
	130.00	DEC	09/781,836	GR 98 P 2318	494	JUN 3 2002	
	130.00	PET FEE	10/026,240	A-2869	496	JUN 3 2002	
credit requested	130.00	Fee code 1051	10/001,175	WEB-20105	554	11/25/2002	
	110.00	EXT	09/100,578	FS-2136	565	11/15/2002	
dupl chg 10/21 & 12/30	740.00	FILING FEE	10/273,524	MUH-12355	4245-1	12/30/02 cr req 1/16/03	
credit requested	54.00		09/728,336	TER-1054-8/23	574	12/31/2002	
deposit	1,280.00		09/124,288	GR 98 P 2078	580	1/17/2003	
credit requested	130.00	requested crd	09/789,342	GR 00 P 1335	589	2/3/2003	
	180.00	requested crd	09/833,008	GR 00 P 1722	592	2/19/2003	
	42.00		10/335,530	F-3869-1 RI	597	3/4/2003	
dupl Chrd on 04/09/02+2/12	130.00	requested crd	08/015,400	5,890,430	880-1	2/12/2003	
	110.00		09/707,031	GR 98 P 3312	600	3/12/2003	
	180.00		09/603,751	MP.N. 99/612	606	3/19/2003	
sw/h/b SE crd req 03/31/03	375.00		10/397,144	2912-152	6848	3/25/2003	
	180.00		09/564,800	013550-046	623	4/30/2003	
	120.00	reqd rfd PTO	10/075,187	GLM-1049CIP	627	5/13/2003	
To Darrel Forte	110.00	PTO chd	09/460,352	GR 98 P 5909	628	5/16/2003	
	1,280.00	Rqstd rfd	09/291,663	HEM 96/816	629	5/23/2003	